

General terms and conditions for the sale and delivery of brand-new commercial vehicles and any units contained therein, including as xKD sets, as well as the sale and delivery of MAN Genuine Parts®, MAN Genuine Parts® ecoline and MAN Genuine Accessories®

The following "Terms and Conditions of Business" apply to the offer and sale of factory-new commercial vehicles and any units contained therein, including as xKD sets, and also to MAN Genuine Parts®, MAN Genuine Parts® ecoline and MAN Genuine Accessories® from the Seller (MAN Truck & Bus AG) to the Purchaser, insofar as said Purchaser is an entrepreneur who upon concluding the Agreement acts in pursuance of his commercial or self-employed professional activities or is a legal entity under public law or a public special fund. Vehicle sale as an xKD set means: Knocked Down, e.g. CKD (Completely Knocked Down), SKD (Semi Knocked Down), TiB (Truck in the Box) and CiB (Chassis in the Box).

General Terms and Conditions of Business of the Purchaser that conflict with the present General Terms and Conditions of Business shall not be binding on the Seller, even if the purchase order is based on them and the Seller has not expressly rejected their content.

I. Conclusion of Agreement/transfer of rights and obligations of the Purchaser

1. Unless otherwise expressly agreed in the quotation, all quotations by the Seller shall be without obligation. The Purchaser shall be committed to the purchase order for no longer than 6 weeks. The Purchase Agreement shall be deemed concluded if within the periods indicated the Seller confirms in writing the acceptance of the purchase order for the object of purchase specified in detail or effects delivery of said object. The Seller's written order confirmation shall form the authoritative basis of the Agreement. All agreements, verbal subsidiary agreements and contractual amendments shall be valid only if the Seller has confirmed them in writing.
2. The transfer of the Purchaser's rights and obligations under the Purchase Agreement shall be subject to the written consent of the Seller.

II. Prices

1. The price for the object of purchase is the price ex works, without any cash discount or other reductions, plus the turnover tax applicable on the date of delivery (purchase price). Any additional services agreed (e.g. transfer costs, packaging, financing costs) shall be charged extra. The Customer shall pay customs duties, taxes, freight and similar dues.
2. Prices shall be based on the cost basis given at the time of the quotation. In the event of material changes to this cost basis before receipt of the order confirmation, the Seller reserves the right to adjust the price. A change of at least 5% shall be deemed material. In this case, the Purchaser shall be entitled to withdraw within 2 weeks from receipt of the order confirmation.

III. Payment – delay in payment, offsetting and right of retention

1. The purchase price and prices for additional services shall be due for payment when the object of purchase is handed over and the invoice is handed over or sent. The payment of the purchase price must be made free of charge to the account specified by the Seller according to the agreements reached.
Payment for spare-parts deliveries must be effected on the basis of cash against documents. Letters of credit, bills of exchange, cheques and payment orders shall be accepted only in accordance with an agreement and only in payment, not in lieu of performance, and all bill, collection and other expenses shall be payable by the Purchaser. Forwarding and prolongation shall not count as performance. The Seller shall not assume any liability for on-time submission, protestation, notification and return in the event of dishonouring. Interest shall not be paid on any advance payments.
Should the Purchaser delay payment of the purchase price, the Seller shall be entitled to demand interest on arrears at a rate of 9 percentage points above the main refinancing operations rate of the European Central Bank (ECB) (www.bundesbank.de).
2. The Purchaser may only offset claims of the Seller where the Purchaser's counter-claim is undisputed or legally enforceable; this shall also apply to the assertion of a right of retention. Where the counter-claim is not undisputed or legally enforceable, the Purchaser may assert a right of retention only where it relates to claims ensuing from the purchase contract.
3. If the Purchaser has to pay interest and costs outside the principal service, then any payment by the Purchaser that is insufficient to redeem the entire debt shall first be offset against the costs, then against the interest and finally against the principal service.

IV. Delivery and delay in delivery

1. Delivery dates and periods may be agreed as binding or non-binding and shall be fixed in writing. Unless otherwise agreed, the delivery period shall commence on the date of the written order confirmation and after all technical and commercial details have been clarified and any agreed downpayments have been paid. This is complied with if the shipment is ready for dispatch within the delivery deadline and the Customer is informed of this.
In the case of spare parts, the deadline is considered met if the parts are made available or dispatched ex works within the period.
If during the delivery period the Purchaser demands any changes to the design or the scope of delivery or fails to fulfil its contractual obligations promptly when they become due, this shall result in an interruption of the delivery period; the Seller shall not be responsible for any resulting delays in delivery. The Seller shall be entitled to effect partial deliveries.
2. If a non-binding delivery deadline or a non-binding delivery period is exceeded by six weeks, the Purchaser shall be entitled to call upon the Seller to deliver. On receipt of this reminder the Seller is in default. If the

Purchaser is entitled to claim compensation for the delay in delivery, this shall be limited to a maximum of 5% of the agreed purchase price if the Seller has acted with slight negligence.

3. If, in addition, the Purchaser wishes to withdraw from the agreement and/or demand compensation instead of performance, he must, after expiry of the six week period specified in Subclause 2, sentence 1 of this Clause, set the Seller a reasonable time limit for the delivery. Compensation claims in the event of slight negligence are excluded.
If, whilst the Seller is in default, an accident makes it impossible for him to deliver, he is nevertheless liable in accordance with the aforementioned liability limitations. The Seller is not liable if the damage would have occurred even if delivery had been made in good time.
4. If a binding delivery deadline or a binding delivery period is exceeded, the Seller is already in default when the delivery deadline or delivery period is exceeded. The rights of the Purchaser are then in accordance with Subclause 2, sentence 3 and Subclause 3 of this Clause.
5. The limitations of liability and exclusions of liability set out in this Clause do not apply to damage arising from grossly negligent or intentional breach of duty by the Seller, its legal representative or agent, or in the event of injury to life, limb or health.
6. In the case of force majeure or disruption of operations at the Seller's or at his suppliers' in which the Seller through no fault of his own is temporarily unable to deliver the object of purchase by the date agreed or within the period agreed, the periods and deadlines named in Subclauses 1 to 4 of this Clause shall be extended by the duration of the disruption caused by these circumstances. If such disruptions cause a delay in performance of more than six months, the Purchaser shall be entitled to withdraw from the agreement. Other rights to withdraw from the agreement shall remain unaffected.
7. If the Purchaser exercises its right to withdraw from the Agreement on account of failure to meet the delivery period, the Purchaser shall, in addition to repayment of any downpayment made, also be entitled to demand interest at a rate of 9 percentage points above the main refinancing operations rate of the ECB (www.bundesbank.de).
8. During the period of delivery the manufacturer's right to make changes to the construction, design, tint of the purchase object and to the extent of delivery is reserved provided that in respect of the Seller's interests said changes can reasonably be expected to be acceptable to the Purchaser. Where the Seller or manufacturer uses symbols or figures to designate the purchase order or the object of purchase ordered, no rights may be derived merely from this. Any information that is provided in descriptions that are valid at the time the agreement is concluded and that concern the scope of delivery, appearance, services, dimensions and weights, service product consumption, operating costs, freight rates and other values relating to the object of purchase shall be deemed approximate. They shall serve as a yardstick for determining if the object of purchase is free of defects pursuant to Clause VII.

V. Acceptance and shipment

1. The Purchaser shall be entitled to inspect the object of purchase at the agreed acceptance location within six days following notification that the object of purchase is ready for dispatch. The right to perform an inspection shall be deemed to have been tacitly renounced if the inspection is not carried out within the specified period or if the dispatch order is issued. The object of purchase shall then be deemed to have been transferred and duly delivered when it is delivered to the Purchaser or its appointed agent.
MAN Genuine Parts®, MAN Genuine Parts® ecoline and MAN Genuine Accessories® are dispatched without prior indication of readiness for dispatch. Should the contents of a shipment with undamaged packaging not comply with the shipping note, notification of this must be received by the Seller within 21 days of receipt; complaints or claims must be made in the same period using the forms provided by the Seller or using an IT system made available by the Seller. If the above action is not taken, the delivery is considered to have been duly accepted.
Insofar as no contractual agreements to the contrary exist in individual cases, all risks are transferred to the Purchaser upon dispatch of the object of purchase ex works. If, after notification of readiness for dispatch, the Purchaser delays for more than two weeks in taking possession of the object of purchase, in issuing the shipping instructions, in fulfilling the payment agreements or in providing the agreed surety, then the Seller shall after expiry of an appropriate period of grace that has been stipulated in writing be entitled to demand 15% of the purchase price as compensation. Said compensation shall be higher or lower, depending on whether the Seller or Purchaser can furnish proof of a larger (Seller) or smaller (Purchaser) extent of damage.
2. If the Seller does not exercise its right under Subclause 1, it shall then, without prejudice to its other rights, be entitled to dispose freely of the object of purchase and to deliver an equivalent object of purchase in its place in accordance with the terms of the Agreement and within a reasonable period.
3. All transport containers and transport frames shall remain the property of the Seller and must be returned by the Purchaser to the respective supplying plant immediately and free of charge. The Seller shall be entitled to charge the Purchaser a security deposit for any transport containers delivered. The corresponding amount of the security deposit shall be credited to the Purchaser when the transport containers are returned. The amount of the respective security deposit shall be based on rates which shall be set at the Seller's discretion. Security deposits shall be billed at regular intervals to be set by the Seller.
Payment of the security deposit shall be made without cash, through bank transfer or by cheque.

The Seller reserves the right to charge security deposits for all container types.

VI. Retention of title

1. The object of purchase shall remain the property of the Seller until the Purchaser has fulfilled the Seller's claims under the Purchase Agreement. In addition, the retention of title shall also apply to claims of the Seller against the Customer arising during the normal course of business until the claims in connection with the purchase are settled.
At the Purchaser's request the Seller is obliged to waive his retention of title if the Purchaser has incontestably fulfilled all obligations in connection with the object of purchase and adequate security is available for the remaining claims arising from normal business relations.
The Purchaser who is a member of the Seller's sales network and the Purchaser who provides more than just insignificant value creation on the object of purchase, are entitled to resell the object of purchase in the normal course of business. The same applies for all Purchasers from the above-mentioned group of purchasers for MAN Genuine Parts®, MAN Genuine Parts® ecoline and MAN Genuine Accessories®. The Purchaser shall now transfer his claims from reselling the object of purchase to the Seller, amounting to the purchase price agreed with him. This transfer shall apply irrespective of whether the item of purchase has been resold without or only after processing. The Purchaser shall remain entitled to collect the claim even after the transfer. The Seller's entitlement to also collect the claim remains unaffected by this. However, the Seller shall not collect the claim as long as the Purchaser meets his payment obligations, is not in default and, in particular, has not applied to institute insolvency proceedings. While the retention of title applies the Seller is entitled to have the vehicle registration document in his possession.
2. Should the Purchaser fail to pay the purchase price and prices for additional services or fails to pay in accordance with the terms of this contract, the Seller shall be entitled to withdraw from the contract and/or in the event of a culpable breach of contractual obligations on the part of the Purchaser shall be entitled to claim compensation instead of performance if the Seller has given the Purchaser notice to remedy the breach without result, unless such notice is deemed unnecessary according to the statutory provisions. If the Seller is entitled to compensation instead of performance and takes the purchase object back, the Seller and Purchaser are agreed that the Seller remunerates the usual selling value which the purchase object has at the time of its being taken back. Without prejudice to the Purchaser's payment obligations, the Seller shall be entitled to sell the object of purchase, plus accessories, that it has taken back into its possession on the open market for the best possible price. The Seller shall at its discretion also be entitled to arrange for a publicly appointed and sworn expert to ascertain the customary value of the object of purchase. The Purchaser shall bear all costs arising from the sold object's being taken back and utilised. The utilisation costs, without provision of proof, are 5% of the usual selling value. They shall be set higher or lower if the Seller can furnish proof of higher costs or the Purchaser can furnish proof that lower costs or no costs at all have been incurred. If the Purchaser fails to fulfil its obligations and if the Seller asserts its retention of title, then under no circumstances may it be claimed that the object of purchase is required to maintain the Purchaser's business.
3. While the retention of title applies, the object of purchase may not be pledged or transferred by way of security without the Seller's written consent.
In the event of intervention by creditors of the Purchaser, and in particular in the event of levies of execution in respect of the object of purchase, the Purchaser must notify the Seller accordingly by registered airmail. The costs of measures to remove the intervention, including in particular costs of intervention proceedings, shall be borne by the Purchaser if the Seller is unable to collect such costs from the opposing party.
During the period of retention of title the Purchaser must insure the object of purchase for theft, burglary, fire, third-party liability and damage with the proviso that the Seller shall be entitled to the rights under the insurance policy until payment in full of the remaining amounts due. The insurance policy and also premium receipts must be submitted to the Seller on request. During the period of the retention of title, the Purchaser is obliged to maintain the object of purchase in proper condition and to conduct immediately and professionally any repairs that become necessary.
4. If the country in which the object of purchase is held does not authorise retention of title but does permit the Seller to reserve other rights to the object of purchase, the Seller may exercise these rights. The Purchaser is obligated to take all measures at his own expense that are necessary to enable the right to ownership or, in place of this, other rights to the object of purchase to enter into force or be upheld.

VII. Liability for defects

1. The Purchaser's right to assert claims on account of defects in objects of purchase shall expire one year after delivery of the object of purchase. If the object of purchase is sold on to the end customer (contracting partner of the Purchaser), then claims shall expire one year after the object of purchase is delivered to the end customer, provided that delivery to the end customer is effected within 12 months of the object of purchase being completed by the Seller, unless one of the following provisions applies.

Claims of the Purchaser on account of defects in the objects of purchase specifically listed below shall expire as follows:

- a. On account of defects in the driveline subassemblies (engine, gearbox, transfer case and drive axle(s)) installed in new commercial vehicles (with the exception of attachments for these components): within 24 months of the object of purchase being delivered to the end customer or 36 months after the object of purchase is completed by the Seller, whichever occurs first;
- b. On account of defects in new components relating to the engine (excluding starter, three-phase alternator and air compressor), gearbox and driven axles: within 24 months of installation or 30 months of these new components being completed by the Seller or, after expiry of the first year after installation, up to a maximum mileage of 200,000 km, whichever occurs first;

c. On account of defects in reconditioned engines, reconditioned gearboxes and reconditioned parts of driven axles: within 12 months of installation or 18 months of their completion by the Seller, or in this case up to a maximum mileage of 100,000 km, whichever occurs first;

d. On account of defects in MAN Genuine Parts®, MAN Genuine Parts® ecoline and MAN Genuine Accessories®: within 12 months of delivery.

2. Shortening the statute of limitations as set out in Subclause 1, sentence 1 and the exclusion of liability for defects in Subclause 1, sentence 2 do not apply to damage arising from grossly negligent or intentional breach of duty by the Seller, its legal representative or agent, or in the event of injury to life, limb or health.
3. If, in accordance with the statutory regulations, the Seller is liable for damage caused by slight negligence, the Purchaser's liability is limited: Liability shall exist only in the event that material contractual obligations are breached, such as those that the Purchase Agreement intends to impose on the Seller by virtue of its very content and purpose or whose performance is a prerequisite for the proper execution of the Purchase Agreement in the first place and on compliance with which the Purchaser may and does regularly rely. This liability shall be limited to typical kinds of damage foreseeable at the time the agreement was concluded. Insofar as the damage is covered by insurance taken out by the Purchaser for the type of damage in question (fixed-sum insurance policies are excluded), the Seller shall be liable only for possible concomitant disadvantages for the Purchaser (e.g. higher insurance premiums or interest-related disadvantages) until the claim in question has been settled by the insurance company.
Personal liability of the legal representatives, persons acting under instructions and employees of the Seller's company for damage caused by slight negligence on their part is excluded.
Subclause 2 of this Clause applies accordingly to the aforementioned limitation of liability and the aforementioned exclusion of liability.
4. Irrespective of whether the Seller is at fault, the Seller's possible liability shall remain unaffected with regard to malicious silence in respect of a defect, to the acceptance of a warranty or to a procurement risk and under product liability law.
5. If the object of purchase is an xKD set, the regulations set out under Subclause VII No. 1, sentence 1 and No. 1a regarding liability for defects shall apply, with the following modifications:
 - a. The date of completion of the object of purchase by the Seller in accordance with Subclause VII No. 1, sentence 1 and No. 1 a. is given on delivery from the Seller to the Purchaser.
 - b. In Subclause VII No. 1a., "in new commercial vehicles" shall be replaced by "in new commercial vehicles or xKD sets".
6. Moreover, the Seller shall grant a warranty against rust corrosion of truck cabs for a period of 60 months from the date of first registration or 66 months from the date of completion by the Seller / delivery of xKD sets from the Seller to the Purchaser, whichever occurs first.
Prerequisites for this are as follows:
 - a. Any preservation work in accordance with the maintenance instructions must be carried out by an authorised workshop (the Purchaser must provide the Seller with proof or the warranty shall expire)
 - b. Any mechanical defects that occur must be rectified by a specialist workshop. Protective body-cavity coating must be carried out in accordance with the Seller's instructions.
7. As regards the procedure for the elimination of defects, the following shall apply:
 - a. The Purchaser shall address claims in respect of defects to the Seller. In the event of oral notifications of claims the Purchaser is to be given a written confirmation of receipt of the notification in question.
 - b. If the object of purchase breaks down because of a defect the Purchaser may, with the Seller's prior consent, contact a different master workshop.
 - c. For the parts that are installed in the course of the elimination of defects, the Purchaser is entitled to make claims arising from defects until the period of limitation of liability for the object of purchase under the Purchase Agreement has expired.
 - d. Any parts that are replaced become the property of the Seller.
8. Changes in ownership of the object of purchase do not affect the claims for elimination of defects.
9. No defects shall apply in the event of, for example, damage due to
 - the effect of an external mechanical force
 - failure to adhere to the Operator's Manual
 - the omission of prescribed maintenance work or incorrect performance of maintenance work
 - improperly modified parts
 - installation of parts from third parties
 - normal wear, in particular of batteries, clutch linings, brake linings, brake drums, V-belts, bearings, trailer couplings, fifth-wheel couplings, windscreen wiper blades, glass (physical damage), bulbs, spiral hoses and spiral cables
 - incorrect driving behaviour
 - consequences of accidents
 - blocked or soiled fuel lines or filters.

VIII. Liability for other defects

1. Other claims on the part of the Customer that are not regulated by Clause VII. Liability for defects lapse in accordance with the regular statute of limitations.
2. The liability for delay in delivery is definitively laid down in Clause IV. The provisions of Clause VII. Liability for defects, Subclauses 2, 3 and 4 apply accordingly to all other compensation claims against the Seller.

IX. Applicable law

The Purchase Agreement shall be subject to the laws of the Federal Republic of Germany. The application of uniform laws on the conclusion of international purchase agreements for movable property and on the international purchase of movable property is excluded.

X. Place of performance and place of jurisdiction

The place of performance shall be the respective supplying plant of the Seller. The place of jurisdiction for both parties for all present and future direct and indirect claims arising from the business relationship, including for cases involving bills of exchange and documents, shall be Munich, Germany. However, the Seller reserves the right to choose to have disputes under the present Agreement decided in accordance with the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with these rules, whereby any such decision shall be final and binding on both parties to the Agreement; alternatively, the Seller may choose to bring a case at the court with jurisdiction for the Purchaser's place of domicile or at the court for the place where the highest national court of the Purchaser has its seat.

As at: 12/2015